



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This is an adjourned hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 5, 2020. The tenant submitted in support of this claim a photograph of the Canada Post Customer Receipt Tracking label (noted on the cover of this decision). I accept the undisputed affirmed evidence of the tenant and find that the landlord is deemed sufficiently served as per section 90 of the Act 5 days later on October 10, 2020.

The preliminary issue is that of jurisdiction as stated in the interim decision dated October 1, 2020 regarding the submission of a tenancy agreement called a "Travel Accommodation Tenancy Agreement". Section 4(e) of the Act states that the Act does not apply to living accommodation occupied as vacation or travel accommodation.

The tenant argues that this is false claim by the landlord in an effort to circumvent the Act. The tenant stated that this is not a vacation or travel accommodation. The tenant stated that he had paid a \$900.00 security deposit; he applied for and registered the utilities (hydro) in his name and that no services such as bedding were included. The tenant stated that the landlord used parts of the Residential Tenancy Branch's Tenancy

Agreement to mislead a tenant to sign. The tenant stated that this was his primary residence and argues that the Act applies.

Residential Tenancy Branch Policy Guideline #27, Jurisdiction, Vacation or Travel Accommodation and Hotel Rooms, states in part,

The RTA does not apply to vacation or travel accommodation being used for vacation or travel purposes. However, if it is rented under a tenancy agreement, e.g. a winter chalet rented for a fixed term of 6 months, the RTA applies.

Whether a tenancy agreement exists depends on the agreement. Some factors that may determine if there is a tenancy agreement are:

- *Whether the agreement to rent the accommodation is for a term;*
- *Whether the occupant has exclusive possession of the hotel room;*
- *Whether the hotel room is the primary and permanent residence of the occupant.*
- *The length of occupancy.*

Even if a hotel room is operated pursuant to the Hotel Keeper's Act, the occupant is charged the hotel room tax, or the occupancy is charged a daily rate, a tenancy agreement may exist. A tenancy agreement may be written or it may be oral.

A person occupying a room in a residential hotel may make an application for dispute resolution, without notice to any other party, requesting an interim order that the RTA applies to that living accommodation.

Residential Tenancy Branch Policy Guideline #9, Tenancy Agreements and Licenses to Occupy states in part,

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- *the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and*
- *the tenant pays a fixed amount for rent.*

In this case, I have the undisputed testimony of the tenant that he entered into a tenancy agreement for the exclusive possession of this rental. The tenant paid a \$900.00 security deposit as shown by the submitted INTERAC e-Transfer dated May

13, 2020. The tenant stated that he paid a fixed monthly rent each month of the tenancy and he was required by the landlord to apply and open a utility (hydro) account for the rental unit. The tenant also stated that normal services that come with a travel accommodation such as daily or weekly room service, regular laundering of bedding and linens were not provided. In fact, the tenant stated that only a mattress and frame were provided and the tenant had to obtain his own.

A review of the submitted copy of the “Furnished Travel Accommodation Tenancy Agreement” shows that the landlord has used a format similar that of the Residential Tenancy Branch with section 1 of the agreement stating,

Application of the Residential Tenancy Act

- 1) The tenant agrees that the rental unit will only be occupied for the sole purpose of being utilized as vacation or travel accommodations. Use for any other purpose is explicitly prohibited. Accordingly, both the landlord and tenant acknowledge that the Residential Tenancy Act of British Columbia does not apply to the terms of this tenancy agreement or any addendums, changes or additions to these terms.
- 2) Since the rental unit will only be utilized for vacation or travel accommodations, the landlord and tenant agree that the Residential Tenancy Branch of British Columbia is the inappropriate organization to settle any disputes arising from this agreement.
- 3) If the landlord and tenant agree to 1) and 2), then they must both initial in the boxes to the right.

[reproduced as written]

I find in the absence of any submissions or evidence by the landlord that the Act applies. This tenancy is not a “Vacation or Travel Accommodation”. The tenant’s submission that a normal vacation or travel accommodation does not require a security deposit; the opening of a utilities (hydro) account and services where no bedding or linens were provided to the tenant as part of services. The hearing shall proceed on the tenant’s application for a monetary claim.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$1,800.00 which consists of:

\$900.00	Return of Original Security Deposit
\$900.00	Compensation, Sec. 38(6) Fail to Comply
\$100.00	Filing Fee

The tenant clarified that his original application contained an exception where the landlord had notified the tenant of returning \$185.00 out of the original \$900.00. The tenant stated as of the date of this hearing no such return was made. The tenant seeks the return of the entire original \$900.00 security deposit.

The tenant provided undisputed affirmed evidence that a \$900.00 security deposit was paid via e-Transfer on May 13, 2020. The tenant stated that the tenancy ended on August 31, 2020 as per the submitted copy of the Condition Inspection Report for the Move-Out dated August 31, 2020. The tenant stated during this move-out inspection the tenant provided his forwarding address in writing in the "Security/Pet Damage Deposit Statement" section. The tenant stated that as of the date of this hearing despite communication by the landlord no portion of the security deposit has been returned by the landlord. The tenant stated that at no time has he been served with a notice of a hearing for an application filed by the landlord to retain the security deposit.

In support of this claim the tenant has submitted copies of:

May 13, 2020 e-Transfer of \$900.00
Completed Condition Inspection Report, Move-Out dated August 31, 2020
Signed and Dated Tenancy Agreement
Canada Post Registered Mail Tracking label
Photograph of mattress on bed frame

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in

writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed evidence of the tenant and find that the tenancy ended on August 31, 2020 and that the tenant had provided his forwarding address for return of the \$900.00 security deposit. I also accept the undisputed evidence of the tenant that as of the date of this hearing the landlord has failed to comply by returning it within the allowed 15 day period nor has the landlord applied in dispute of its return.

On this basis, the tenant's application is entitled to return of the original \$900.00 security deposit.

I also find pursuant to section 38(6) the landlord having failed to comply with section 38(1) is required to pay an amount equal to the \$900.00 security deposit.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,900.00.

This order must be served upon the tenant. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court to be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 21, 2021

Residential Tenancy Branch